

**ASSEMBLY BILL**

**No. 2177**

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**Introduced by Assembly Member Valadao**

February 23, 2012

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An act to amend Section ~~646.9~~ 11413 of the Penal Code, relating to ~~stalking~~ arson.

LEGISLATIVE COUNSEL'S DIGEST

AB 2177, as amended, Valadao. ~~Stalking~~ Arson.

*Under existing law, any person who, in certain places, including, among other places, a health facility, library, or a place of worship, explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, for the purpose of terrorizing another, is guilty of a felony, punishable by imprisonment in a county jail for 3, 5, or 7 years, and a fine not exceeding \$10,000.*

*This bill would add to the list of places to which these provisions apply an agricultural facility in which the primary purpose is raising, growing, and caring for livestock in confinement for the production of food. By expanding the scope of a crime, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Under existing law, any person who willfully, maliciously, and repeatedly follows, or willfully and maliciously harasses another person,~~

and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that fine and imprisonment, or by imprisonment in the state prison.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 11413 of the Penal Code is amended to  
2     read:
- 3     11413. (a) Any person who explodes, ignites, or attempts to  
4     explode or ignite any destructive device or any explosive, or who  
5     commits arson, in or about any of the places listed in subdivision  
6     (b), for the purpose of terrorizing another or in reckless disregard  
7     of terrorizing another is guilty of a felony, and shall be punished  
8     by imprisonment pursuant to subdivision (h) of Section 1170 for  
9     three, five, or seven years, and a fine not exceeding ten thousand  
10    dollars (\$10,000).
- 11    (b) Subdivision (a) applies to the following places:
- 12    (1) Any health facility licensed under Chapter 2 (commencing  
13    with Section 1250) of Division 2 of the Health and Safety Code,  
14    or any place where medical care is provided by a licensed health  
15    care professional.
- 16    (2) Any church, temple, synagogue, mosque, or other place of  
17    worship.
- 18    (3) The buildings, offices, and meeting sites of organizations  
19    that counsel for or against abortion or among whose major activities  
20    are lobbying, publicizing, or organizing with respect to public or  
21    private issues relating to abortion.
- 22    (4) Any place at which a lecture, film-showing, or other private  
23    meeting or presentation that educates or propagates with respect  
24    to abortion practices or policies, whether on private property or at  
25    a meeting site authorized for specific use by a private group on  
26    public property, is taking place.
- 27    (5) Any bookstore or public or private library.

1 (6) Any building or facility designated as a courthouse.

2 (7) The home or office of a judicial officer.

3 (8) Any building or facility regularly occupied by county  
4 probation department personnel in which the employees perform  
5 official duties of the probation department.

6 (9) Any private property, if the property was targeted in whole  
7 or in part because of any of the actual or perceived characteristics  
8 of the owner or occupant of the property listed in subdivision (a)  
9 of Section 422.55.

10 (10) Any public or private school providing instruction in  
11 kindergarten or grades 1 to 12, inclusive.

12 *(11) An agricultural facility in which the primary purpose is*  
13 *raising, growing, and caring for livestock in confinement for the*  
14 *production of food, including, but not limited to, beef cattle*  
15 *feedlots, milk cow dairies, egg and poultry operations, swine*  
16 *breeding and growing farms, livestock auction yards, and*  
17 *slaughterhouses.*

18 (c) As used in this section, “judicial officer” means a magistrate,  
19 judge, justice, commissioner, referee, or any person appointed by  
20 a court to serve in one of these capacities, of any state or federal  
21 court located in this state.

22 (d) As used in this section, “terrorizing” means to cause a person  
23 of ordinary emotions and sensibilities to fear for personal safety.

24 (e) Nothing in this section shall be construed to prohibit the  
25 prosecution of any person pursuant to Section 18740 or any other  
26 provision of law in lieu of prosecution pursuant to this section.

27 *SEC. 2. No reimbursement is required by this act pursuant to*  
28 *Section 6 of Article XIII B of the California Constitution because*  
29 *the only costs that may be incurred by a local agency or school*  
30 *district will be incurred because this act creates a new crime or*  
31 *infraction, eliminates a crime or infraction, or changes the penalty*  
32 *for a crime or infraction, within the meaning of Section 17556 of*  
33 *the Government Code, or changes the definition of a crime within*  
34 *the meaning of Section 6 of Article XIII B of the California*  
35 *Constitution.*

36 ~~SECTION 1. Section 646.9 of the Penal Code is amended to~~  
37 ~~read:~~

38 ~~646.9. (a) Any person who willfully, maliciously, and~~  
39 ~~repeatedly follows or willfully and maliciously harasses another~~  
40 ~~person and who makes a credible threat with the intent to place~~

1 that person in reasonable fear for his or her safety, or the safety of  
2 his or her immediate family is guilty of the crime of stalking,  
3 punishable by imprisonment in a county jail for not more than one  
4 year, or by a fine of not more than one thousand dollars (\$1,000),  
5 or by both that fine and imprisonment, or by imprisonment in the  
6 state prison.

7 (b) Any person who violates subdivision (a) when there is a  
8 temporary restraining order, injunction, or any other court order  
9 in effect prohibiting the behavior described in subdivision (a)  
10 against the same party, shall be punished by imprisonment in the  
11 state prison for two, three, or four years.

12 (c) (1) Every person who, after having been convicted of a  
13 felony under Section 273.5, 273.6, or 422, commits a violation of  
14 subdivision (a) shall be punished by imprisonment in a county jail  
15 for not more than one year, or by a fine of not more than one  
16 thousand dollars (\$1,000), or by both that fine and imprisonment,  
17 or by imprisonment in the state prison for two, three, or five years.

18 (2) Every person who, after having been convicted of a felony  
19 under subdivision (a), commits a violation of this section shall be  
20 punished by imprisonment in the state prison for two, three, or  
21 five years.

22 (d) In addition to the penalties provided in this section, the  
23 sentencing court may order a person convicted of a felony under  
24 this section to register as a sex offender pursuant to Section  
25 290.006.

26 (e) For purposes of this section, “harasses” means engages in a  
27 knowing and willful course of conduct directed at a specific person  
28 that seriously alarms, annoys, torments, or terrorizes the person,  
29 and that serves no legitimate purpose.

30 (f) For purposes of this section, “course of conduct” means two  
31 or more acts occurring over a period of time, however short,  
32 evidencing a continuity of purpose. Constitutionally protected  
33 activity is not included within the meaning of “course of conduct.”

34 (g) For purposes of this section, “credible threat” means a verbal  
35 or written threat, including that performed through the use of an  
36 electronic communication device, or a threat implied by a pattern  
37 of conduct or a combination of verbal, written, or electronically  
38 communicated statements and conduct, made with the intent to  
39 place the person that is the target of the threat in reasonable fear  
40 for his or her safety or the safety of his or her family, and made

1 with the apparent ability to carry out the threat so as to cause the  
2 person who is the target of the threat to reasonably fear for his or  
3 her safety or the safety of his or her family. It is not necessary to  
4 prove that the defendant had the intent to actually carry out the  
5 threat. The present incarceration of a person making the threat  
6 shall not be a bar to prosecution under this section. Constitutionally  
7 protected activity is not included within the meaning of “credible  
8 threat.”

9 (h) For purposes of this section, the term “electronic  
10 communication device” includes, but is not limited to, telephones,  
11 cellular phones, computers, video recorders, fax machines, or  
12 pagers. “Electronic communication” has the same meaning as the  
13 term defined in Subsection 12 of Section 2510 of Title 18 of the  
14 United States Code.

15 (i) This section shall not apply to conduct that occurs during  
16 labor picketing.

17 (j) If probation is granted, or the execution or imposition of a  
18 sentence is suspended, for any person convicted under this section,  
19 it shall be a condition of probation that the person participate in  
20 counseling, as designated by the court. However, the court, upon  
21 a showing of good cause, may find that the counseling requirement  
22 shall not be imposed.

23 (k) (1) The sentencing court also shall consider issuing an order  
24 restraining the defendant from any contact with the victim, that  
25 may be valid for up to 10 years, as determined by the court. It is  
26 the intent of the Legislature that the length of any restraining order  
27 be based upon the seriousness of the facts before the court, the  
28 probability of future violations, and the safety of the victim and  
29 his or her immediate family.

30 (2) This protective order may be issued by the court whether  
31 the defendant is sentenced to state prison, county jail, or if  
32 imposition of sentence is suspended and the defendant is placed  
33 on probation.

34 (l) For purposes of this section, “immediate family” means any  
35 spouse, parent, child, any person related by consanguinity or  
36 affinity within the second degree, or any other person who regularly  
37 resides in the household, or who, within the prior six months,  
38 regularly resided in the household.

39 (m) The court shall consider whether the defendant would  
40 benefit from treatment pursuant to Section 2684. If it is determined

1 to be appropriate, the court shall recommend that the Department  
2 of Corrections and Rehabilitation make a certification as provided  
3 in Section 2684. Upon the certification, the defendant shall be  
4 evaluated and transferred to the appropriate hospital for treatment  
5 pursuant to Section 2684.

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